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Deepwater Horizon Oil Spill: Recent Activities and Ongoing Developments

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Summary

In the wake of the explosion of the *Deepwater Horizon* offshore drilling rig in the Gulf of Mexico on April 20, 2010, federal agencies, state and local government agencies, and responsible parties faced an unprecedented challenge. An oil discharge continued for 87 days, resulting in the largest ever oil spill in U.S. waters.

Led by the U.S. Coast Guard, response activities were extensive for several years but have diminished substantially:

- At the height of operations (summer of 2010), response personnel numbered over 47,000.
- As of April 2015, 30 response personnel, including federal officials and civilians, are working on activities related to the *Deepwater Horizon* incident.
- In February 2015, a Coast Guard memorandum announced that in March 2015, the Gulf Coast Incident Management Team (GCIMT) would "transition from Phase III (Operations) ... and reconstitute as a Phase IV Documentation Team." As part of that transition, Coast Guard field unit commanders would respond to reports of oil spills in their respective areas of responsibility.

As one of the responsible parties, BP has spent over $14 billion in cleanup operations. In addition, BP has paid over $15 billion to the federal government, state and local governments, and private parties for economic claims and other expenses, including reimbursements for response costs related to the oil spill. BP and other responsible parties have agreed to civil and/or criminal settlements with the Department of Justice (DOJ). Settlements from various parties, to date, total almost $6 billion. BP's potential civil penalties under the Clean Water Act (CWA), which could be considerable, are not yet determined.

The natural resources damage assessment (NRDA) process, conducted by federal, state, and other trustees, is ongoing and is now in its restoration planning phase. BP agreed to pay $1 billion to support early restoration projects. Ten such projects have been funded to date, with aggregate estimated costs of approximately $71 million. In December 2013, the trustees proposed an additional $627 million to fund 44 restoration projects. The trustees prepared a final plan for these projects in June 2014.

In addition, the RESTORE Act, enacted in 2012, directs 80% of any administrative and civil CWA penalty revenue into a newly created trust fund, which supports environmental and economic restoration projects in the Gulf states. Approximately $800 million is expected to be available from a civil CWA settlement with Transocean—one of the responsible parties—but projects have yet to receive funding.

The *Deepwater Horizon* incident generated considerable interest in offshore drilling safety and related issues. In 2011, the Secretary of the Department of the Interior (DOI) redefined the responsibilities previously performed by the Minerals Management Service (MMS) and reassigned the functions of the offshore energy program among three separate organizations: the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), and the Office of Natural Resources Revenue (ONRR).

These agencies have promulgated several rulemaking changes, some of which are based on issues raised by the *Deepwater Horizon* spill. For example, on April 13, 2015, BSEE released a proposed rule (prior to *Federal Register* publication) that would alter the requirements for blowout preventers and specific drilling practices/procedures.

The Environmental Protection Agency (EPA) proposed a rule on January 22, 2015, that would amend dispersant regulations in 40 CFR Part 300, Subpart J. Dispersants received considerable attention during the *Deepwater Horizon* oil spill response. EPA's January 2015 proposed rule would, among other provisions, establish a threshold for toxicity and revise the minimum criteria for dispersant effectiveness.

During and soon after the spill response, congressional interest was high, but it has since decreased. Although previous Congresses (111^{th}-113^{th}) enacted several oil-spill-related bills, the provisions in these laws (other than the RESTORE Act) generally concern short-term matters that did not have a lasting impact on oil spill governance. In general, oil-spill-related bills in recent years have addressed issues not directly related to the *Deepwater Horizon* incident.

Contents

Tables

Contacts

Introduction

In the wake of the explosion of the *Deepwater Horizon* offshore drilling rig on April 20, 2010, federal agencies, state and local government agencies, and responsible parties[1] faced an unprecedented challenge. Never before had a subsea drilling system discharge of this magnitude, or an oil spill of this size—estimated at approximately 206 million gallons (4.9 million barrels)—occurred in U.S. waters.[2]

The incident tested the public and private response capabilities, as well as the legal framework of liability and compensation under the Oil Pollution Act.[3] The oil spill cleanup, natural resource damage assessment (NRDA), and compensation processes continue today.

This report provides a summary update of selected issues related to the 2010 *Deepwater Horizon* oil spill:

- Oil spill response,
- Fate of the oil,
- Gulf Coast restoration,
- Economic claims and other payments,
- Civil and criminal settlements,
- Department of the Interior regulatory developments,
- Dispersant regulations,
- Congressional activity, and
- Investigations and reports.

More detailed analysis of these and other issues is addressed in other CRS products, some of which are listed at the end of this report.

Oil Spill Response Activities

The uncontrolled discharge from the *Deepwater Horizon* continued for approximately 87 days until, following several attempts, responders gained control of the release on July 15, 2010. The response involved multiple agencies. As this spill occurred in the coastal zone, an on-scene coordinator from the U.S. Coast Guard continues to direct and coordinate the on-site activities of

[1] Although BP is discussed as if it is the sole responsible party—a key term in the existing liability and compensation framework—other entities are also considered responsible parties. The Department of Justice (DOJ) named nine defendants in a civil suit filed December 15, 2010 (press release at http://www.justice.gov/opa/pr/2010/December/10-ag-1442.html). For example, Transocean owned the *Deepwater Horizon* drilling rig. Three companies own the *Macondo* well: BP has a 65% share, Anadarko Petroleum Corporation has a 25% share, and MOEX Offshore has a 10% share. See National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, "Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling," report to the President, January 2011.

[2] An estimated 17% of this oil did not enter the Gulf environment but was directly recovered from the wellhead by BP. See the Federal Interagency Solutions Group, Oil Budget Calculator Science and Engineering Team, *Oil Budget Calculator: Deepwater Horizon-Technical Documentation*, November 2010. See also CRS Report R41531, *Deepwater Horizon Oil Spill: The Fate of the Oil*, by Jonathan L. Ramseur.

[3] P.L. 101-380, primarily codified at 33 U.S.C. §2701 et seq. The Oil Pollution Act amended other sections of the *U.S. Code*, including the Clean Water Act (e.g., 33 U.S.C. §1321) and portions of the tax code (26 U.S.C. §4611 and §9509). See CRS Report R41679, *Liability and Compensation Issues Raised by the 2010 Gulf Oil Spill*, by Jonathan L. Ramseur.

federal, state, local, and private entities (e.g., BP and its contractors). This framework of multiple parties working together under the leadership of the federal government is referred to as the Unified Command.

During the height of operations in the summer of 2010,

- response personnel levels reached 47,000, and response vessel numbers approached 7,000[4]; and
- the maximum extent of shoreline oiling involved almost 1,100 miles of shoreline.[5]

Response activities specific to the 2010 incident have diminished substantially:

- In June 2013, the Coast Guard announced that the shorelines of Alabama, Florida, and Mississippi returned to the pre-spill reporting system via the National Response Center.[6]
- In April 2014, the Coast Guard announced that Louisiana shoreline activities will transition to a "Middle Response" process, akin to the process in Alabama, Florida, and Mississippi.[7] At that time, the federal on-scene coordinator stated that "this response is not over—not by a long shot. The transition to the Middle Response process does not end clean-up operations."[8]
- In February 2015, a Coast Guard memorandum announced that in March 2015, the Gulf Coast Incident Management Team would "transition from Phase III (Operations) ... and reconstitute as a Phase IV Documentation Team."[9] As part of that transition, Coast Guard field unit commanders would respond to reports of oil spills in their respective areas of responsibility. The local commanders are to use their discretion to decide if sampling is needed to identify the source of the oil (i.e., related to the *Deepwater Horizon* incident).
- As of April 2015, 30 response personnel, including federal officials and civilians, are working on activities related to the *Deepwater Horizon* incident.[10]

[4] See "Operational Updates," which were issued daily during the height of the oil spill response. Archived updates are available at http://www.restorethegulf.gov.

[5] Gulf Coast Incident Management Team, *Deepwater Horizon Response: Situation Executive Summary*, December 2013, http://www.restorethegulf.gov.

[6] Unified Command, "U.S. Coast Guard Deepwater Horizon Response transitions to National Response Center reporting," press release, June 10, 2013, http://www.restorethegulf.gov.

[7] As described by the federal on-scene coordinator, "while not an official response term under the NCP, the term 'Middle Response' has been used colloquially to describe the [National Response Center] process of responding to reports of oiling across the Gulf with (1) dedicated Coast Guard teams pre-positioned for rapid response to Deepwater Horizon oil and (2) pre-stationed Oil Spill Removal Organizations on standby, ready to clean up when required." See memorandum from federal on-scene coordinator (Sparks) to Gulf Coast Incident Management Team, April 15, 2014, http://www.restorethegulf.gov/sites/default/files/u306/04.15.14%20FOSC%20Update%20On%20Deepwater%20Horizon%20Response.pdf.

[8] U.S. Coast Guard, "Different Tactics, but Deepwater Horizon Response Is Far from Complete," press release, April 15, 2014, http://www.uscgnews.com/go/doc/4007/2144850/Different-tactics-but-Deepwater-Horizon-Response-is-far-from-complete.

[9] Memorandum from federal on-scene coordinator (Nolan) to Coast Guard District Eight, February 26, 2015 (provided to CRS via internal communication with the Coast Guard).

[10] Personal communication with U.S. Coast Guard (April 16, 2015).

The Fate of the Oil

Following the containment of the Macondo well in July 2010, satellite data began to reveal decreasing daily quantities of oil on the ocean's surface. Many stakeholders wondered where the oil went. In November 2010, the federal government released a peer-reviewed publication that provided an estimate of what happened to the oil.[11] The study concluded that approximately 50% of the oil had evaporated, dissolved, or been effectively removed from the Gulf environment through human activities. Thus, at the time of the study, a substantial portion—over 100 million gallons—remained, in some form, in the Gulf.[12]

Subsequent research has offered some insights into the fate of this "remaining" oil. Some research suggests that microbial organisms (bacteria) consumed a considerable amount of the oil in the water column.[13] Other studies have found evidence indicating that a considerable amount of the oil settled on the sea floor.[14]

Gulf Restoration: NRDA and the RESTORE Act

Natural Resource Damage Assessment

When a spill occurs, natural resource trustees conduct an NRDA to determine the extent of the harm.[15] Trustees may include officials from federal agencies designated by the President, state agencies designated by the relevant governor, and representatives from tribal and foreign governments. Natural resource damages are intended to be compensatory, not punitive. Collected damages cannot be placed into the general treasury revenues of the federal or state government but must be used to restore or replace lost resources.

The National Oceanic and Atmospheric Administration (NOAA) oversees the NRDA process.[16] The trustees' work occurs in three steps: a pre-assessment phase, the restoration planning phase, and the restoration implementation phase. The *Deepwater Horizon* NRDA process is in the restoration planning phase.

In 2011, BP agreed to provide $1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the spill. "Early restoration" projects may be developed prior to the completion of the injury assessment, which may take months or years to

[11] Federal Interagency Solutions Group, Oil Budget Calculator Science and Engineering Team, *Oil Budget Calculator: Deepwater Horizon-Technical Documentation*, November 2010.

[12] For a more extensive analysis, see CRS Report R41531, *Deepwater Horizon Oil Spill: The Fate of the Oil*, by Jonathan L. Ramseur.

[13] See, for example, David Valentine et al, "Dynamic Autoinoculation and the Microbial Ecology of a Deep Water Hydrocarbon Irruption," *Proceedings of the National Academy of Sciences*, January 2012; Bethanie Edwards et al., "Rapid Microbial Respiration of Oil from the Deepwater Horizon Spill in Offshore Surface Waters of the Gulf of Mexico," *Environmental Research Letters*, vol. 6 (August 2011).

[14] See David Valentine et al, "Fallout Plume of Submerged Oil from Deepwater Horizon," *Proceedings of the National Academy of Sciences*, August 2014; and Jeffrey Chanton et al, "Using Natural Abundance Radiocarbon to Trace the Flux of Petrocarbon to the Seafloor Following the Deepwater Horizon Oil Spill," *Environmental Science & Technology*, December 2014.

[15] For more information, see CRS Report R41972, *The 2010 Deepwater Horizon Oil Spill: Natural Resource Damage Assessment Under the Oil Pollution Act*, by Adam Vann and Robert Meltz.

[16] For more information on NOAA activities related to the *Deepwater Horizon* NRDA process, see http://www.gulfspillrestoration.noaa.gov/oil-spill/.

complete. Distribution of early restoration funds has been divided into three phases. The first two phases of early restoration, announced in 2012, were completed and resulted in 10 projects at an estimated cost of approximately $71 million.[17] In May 2013, the trustees proposed additional projects under a third phase.[18] The plan for these projects, finalized in June 2014, proposes funding an additional 44 early restoration projects at a cost of approximately $627 million.[19]

Thus, as of March 2015, the total funding allocated or spent on early restoration projects was $698 million for 54 projects. The funding for the early restoration projects will be credited against BP's liability for natural resource damages resulting from the spill.

Gulf Restoration and the RESTORE Act[20]

In addition to natural resource damages that were a direct result of the spill, the *Deepwater Horizon* incident generated interest in natural resource issues in the region that were present before the spill occurred. On June 15, 2010, the Administration committed to developing a long-term Gulf of Mexico restoration plan for post-spill recovery needs as well as long-term restoration. In contrast to the environmental damages addressed by NRDA, the Administration's plan would address a broader array of restoration needs,[21] many of which predate the oil spill.[22] To further this objective, the President established the Gulf Coast Ecosystem Restoration Task Force in October 2010 to develop a restoration strategy,[23] which was released in December 2011.[24] With the enactment of the RESTORE Act (discussed below) in July 2012 and the creation of the Gulf Coast Ecosystem Restoration Council, the President disbanded the task force.[25]

On July 6, 2012, the President signed P.L. 112-141 (MAP-21), which includes a subtitle referred to as the RESTORE Act. The RESTORE Act establishes the Gulf Coast Restoration Fund in the General Treasury. Eighty percent of any administrative and civil Clean Water Act (CWA) Section 311 penalties paid by responsible parties in connection with the 2010 *Deepwater Horizon* oil spill will provide the revenues for the trust fund. Amounts in the fund will be available for expenditure without further appropriation.

The RESTORE Act distributes monies to various entities through multiple processes:

- 35% divided equally among the five Gulf of Mexico states to be applied toward one or more of 11 designated activities;

[17] See Phase I (April 2012) and Phase II (October 2012) early restoration plans at http://www.gulfspillrestoration.noaa.gov/.

[18] 78 *Federal Register* 26319, May 6, 2013.

[19] U.S. Department of the Interior, "Deepwater Horizon Oil Spill: Programmatic and Phase 3 Early Restoration Plan and Early Restoration Programmatic Environmental Impact Statement," June 2014, http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/ERP-PEIS-Part-1-Cover-through-Chapter-3_Corrected.pdf.

[20] For more information on the RESTORE Act and its implementation, see CRS Report R43380, *Gulf Coast Restoration: RESTORE Act and Related Efforts*, by Charles V. Stern, Pervaze A. Sheikh, and Jonathan L. Ramseur.

[21] See the Obama Administration's *America's Gulf Coast: A Long Term Recovery Plan After the Deepwater Horizon Oil Spill* (sometimes referred to as the "Mabus Report"), September 2010.

[22] See CRS Report R41640, *The Deepwater Horizon Oil Spill and the Gulf of Mexico Fishing Industry*, by Harold F. Upton.

[23] Executive Order 13554 in 75 *Federal Register* 62313 (October 8, 2010).

[24] See Gulf Coast Ecosystem Restoration Task Force, "Gulf of Mexico Regional Ecosystem Restoration Strategy," December 2011, http://epa.gov/gulfcoasttaskforce/pdfs/GulfCoastReport_Full_12-04_508-1.pdf.

[25] Executive Order 13626 in 77 *Federal Register* 56749 (September 13, 2012).

- 30% provided to a newly created Gulf Coast Ecosystem Restoration Council to finance ecosystem restoration activities in the Gulf Coast region;
- 30% disbursed by the council to the five Gulf states based on specific criteria: shoreline impact, oiled shoreline distance from the *Deepwater Horizon* rig, and coastal population. Each state must submit a plan for approval documenting how funding will support one or more of the 11 designated activities; and
- 5% to support marine research and related purposes.

As a result of a CWA civil settlement with Transocean—the owner of the *Deepwater Horizon* drilling rig and an identified responsible party—a total of $800 million, plus interest, is expected to be deposited into the trust fund. Potential CWA civil penalties against BP, which could be considerable, are discussed below.

BP's Potential Clean Water Penalties[26]

Section 311 of the CWA authorizes certain civil judicial penalties for the owner, operator, or person in charge of a vessel, onshore facility, or offshore facility for violations of that provision. A civil judicial penalty applies to a violation of the CWA prohibition on discharging oil into navigable waters of the United States. The monetary penalty for this violation may be up to $37,500 per day of violation, or up to $1,100 per barrel discharged. If the violation is deemed a result of gross negligence or willful misconduct, the penalty is not less than $140,000 for the violation or more than $4,300 per barrel discharged.

A federal judge for the Eastern District of Louisiana has issued rulings on two factors that may play a critical role in the ultimate penalty determination: the degree of negligence and the volume of the spilled oil. On September 4, 2014, the judge determined that, within the context of the civil penalty provisions, the discharge of oil in the 2010 *Deepwater Horizon* incident was the result of BP's "gross negligence" and "willful misconduct." BP has appealed this ruling.

On January 15, 2015, the same judge determined that the oil spill resulted in a discharge of 3.19 million barrels (134 million gallons) of oil into the Gulf of Mexico.[27] Reportedly, both BP and the Department of Justice have appealed or plan to appeal the judge's determination.[28]

Based on the January 2015 and September 2014 court decisions, the maximum potential CWA civil penalty that could be assessed to BP would be $13.7 billion—calculated by multiplying 3.19 million barrels by $4,300/barrel. By comparison, the penalty ceiling would likely be $3.5 billion if a court, through the appeals process, ultimately determines that the discharge was not a result of gross negligence or willful misconduct.

In addition, when determining the amount of the judicial penalty, CWA Section 311(b)(8)[29] states that "the Environmental Protection Agency (EPA) Administrator, the Secretary [of Homeland Security], or the court, as the case may be,"[30] must consider other factors, including "the degree of culpability involved" and "the nature, extent, and degree of success of any efforts of the

[26] Anadarko was a partial owner of the *Deepwater Horizon* drill rig and may face CWA penalties as well.

[27] U.S. District Court for the Eastern District of Louisiana, Findings of Fact and Conclusions of Law, Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico on April 20, 2010, January 15, 2015, http://www.laed.uscourts.gov/OilSpill/Orders/1152015FindingsPhaseTwo.pdf.

[28] See, for example, "BP Win Cutting Gulf Spill Tab by $4 Billion Fought by U.S.," *Bloomberg*, March 13, 2015.

[29] 33 U.S.C. §1321(b)(8).

[30] The Coast Guard is part of the Department of Homeland Security.

violator to minimize or mitigate the effects of the discharge." Therefore, the judicial civil penalty for the incident could be less than the low end of the above range ($3.5 billion), even if gross negligence or willful misconduct is determined.

Economic Claims and Other Payments

As an identified responsible party,[31] BP is liable for cleanup costs, natural resource damages (discussed in a subsequent section), and various economic damages.[32] The total payments associated with the 2010 Gulf spill have already surpassed those of the 1989 *Exxon Valdez* oil spill.[33] As of December 2014, BP has spent over $14 billion in cleanup operations.[34] Further payments made by BP to different parties for various purposes are identified in **Table 1**.

As noted in **Table 1**, the "Court Settlement Program" is still ongoing. In August 2010, multiple lawsuits involving over 100,000 private claims against BP and the other defendants (e.g., Transocean and Haliburton) were consolidated before the U.S. District Court in New Orleans. On April 18, 2012, BP and many of the plaintiffs reached a settlement agreement, which was approved by the court on December 21, 2012. The settlement establishes a court-supervised program to evaluate and award various economic claims from individuals and businesses but does not involve governments, shareholders, or claims related to the drilling moratorium. Except for a limit of $2.3 billion for seafood compensation, the settlement is not capped.[35] As indicated in **Table 1**, the settlement program had awarded over $5 billion as of March 31, 2015.

BP pursued legal action to suspend payments from the settlement program, arguing that parties are receiving payment for losses "not traceable to the Deepwater Horizon accident and oil spill."[36] In March 2014, the Fifth Circuit Court of Appeals upheld a federal district ruling, allowing the court-supervised program to continue paying claims.[37] BP asked the U.S. Supreme Court to review this decision, but in December 2014 the Court declined to review the case.[38]

Other components of the consolidated litigation are still pending, such as claims against BP not included in the above settlement and claims involving the other defendants, including Transocean and Haliburton.

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[31] For the purpose of this report, BP is discussed as if it is the sole responsible party—a key term in the existing liability and compensation framework. However, other parties are also considered responsible parties. The Department of Justice named nine defendants in a civil suit filed December 15, 2010. See U.S. Department of Justice, "Attorney General Eric Holder Announces Civil Lawsuit Against Nine Defendants for Deepwater Horizon Oil Spill," press release, December 15, 2010, http://www.justice.gov/opa/pr/2010/December/10-ag-1442.html.

[32] Oil Pollution Act, 33 U.S.C. §2702.

[33] The *Exxon Valdez* was a U.S.-flagged tanker that grounded in Prince William Sound, AK, in March 1989, spilling approximately 11 million gallons of oil. The oil spill sparked regional and nationwide interest in oil spill prevention, response, cleanup, and liability. In association with the 1989 oil spill, Exxon paid approximately $4.9 billion. Payments were made voluntarily and pursuant to several different legal proceedings at different times over approximately 20 years.

[34] BP *Deepwater Horizon* response website at http://www.bp.com/en/global/corporate/gulf-of-mexico-restoration/deepwater-horizon-accident-and-response.html.

[35] For more information, see Deepwater Horizon Claims Center website at http://www.deepwaterhorizoneconomicsettlement.com.

[36] See, for example, BP, "BP's Response to Fifth Circuit Decision of March 3, 2014," press release, March 4, 2014, http://www.bp.com/en/global/corporate/press/press-releases/bp_s-response-to-fifth-circuit-decision-of-march-3—2014.html.

[37] For further updates on the legal process, see Deepwater Horizon Claims Center website.

[38] BP, "BP Statement on U.S. Supreme Court Decision Not to Review Causation Issue in Settlement," press release, December 8, 2014, http://www.bp.com/en/global/corporate/press/press-releases/cert-decision-statement.html.

Table 1. Selected BP Payments and Commitments Related to the 2010 Oil Spill

As of March 31, 2015, Unless Noted Otherwise

Recipient(s)	Purpose	Amount of Payment ($ millions)
Federal government	Reimbursements for oil spill response costs[a]	$705
	Behavioral health	$10
	Contributions[b]	$22
States	Reimbursements for response costs and other claims	$738
	Tourism promotion	$179
	Seafood marketing	$49
	Seafood testing	$25
	Behavioral health	$42
	Contributions	$5
Individuals and/or businesses	Economic claims	
	- BP Claims Program May 5, 2010-August 22, 2010	$399
	- Gulf Coast Claims Facility August 23, 2010-June 4, 2012	$6,667
	- Court Settlement Program June 4, 2012-Present	$5,040 *Ongoing*
	- BP Claims Program June 4, 2012-July 2014	$14
	Vessels of Opportunity Program[c]	$626
	Real Estate Fund[d]	$54
	Gulf of Mexico Research Initiative[e]	$500
TOTAL		**$15,075**

Source: Prepared by CRS; unless specified below, data from BP, "Gulf of Mexico Oil Spill Claims and Other Payments Public Report," March 31, 2015, http://www.bp.com/en/global/corporate/gulf-of-mexico-restoration/claims-information.html.

Notes: More information about the above payments is available at http://www.bpgulfupdate.com.

a. The reimbursed response costs to federal and state governments is likely included in BP's estimate of total response costs (over $14 billion).

b. The purpose of the "contributions" to the federal government and states is not specified in BP's 2015 public report.

c. During the oil spill response, BP employed private vessels to conduct response efforts such as skimming, booming, and transporting supplies. According to the final report from National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, vessels earned between $1,200 and $3,000 per day. Payment data from Gulf Coast Claims Facility, "Overall Program Statistics," May 14, 2012.

d. BP established a separate fund and process to award claims to real estate agents affected by the incident. Claims data from Gulf Coast Claims Facility, "Overall Program Statistics," May 14, 2012.

e. On May 24, 2010, BP announced a commitment of up to $500 million over 10 years to fund an independent research program to study the impact of the oil spill and its associated response on the environment and public health in the Gulf of Mexico. More information is available at http://gulfresearchinitiative.org.

Civil and Criminal Settlements

The Department of Justice (DOJ) has announced criminal and/or civil settlements with several parties involved in the 2010 oil spill.[39] Settlements from various parties, to date, total almost $6 billion. Other settlements may be forthcoming. As discussed below, the settlement payments will support several objectives.

BP Criminal Settlement

On November 15, 2012, BP and DOJ announced a criminal penalty settlement of approximately $4 billion, which was approved by the U.S. District Court in the Eastern District of Louisiana on January 29, 2013. In accordance with the settlement, BP has agreed to plead guilty to 11 felony counts of misconduct or neglect of ships officers for the deaths of 11 people in the disaster, as well as misdemeanor counts under the CWA and the Migratory Bird Treaty Act and a felony count of obstruction of Congress.[40]

The $4 billion would be distributed as follows:

- $2.394 billion to the National Fish and Wildlife Foundation (NFWF) to support restoration efforts in the Gulf states,[41]
- $1.15 billion to the Oil Spill Liability Trust Fund,
- $350 million to the National Academy of Sciences for oil spill prevention and response research,
- $100 million to the North American Wetlands Conservation Fund, and
- $6 million to the General Treasury.

BP Civil SEC Settlement

On November 15, 2012, BP and the Securities and Exchange Commission (SEC) announced a settlement involving civil securities fraud charges, including statements concerning the estimated flow rate of the leaking well. The U.S. District Court in the Eastern District of Louisiana approved the settlement on December 10, 2012. BP agreed to pay $525 million to settle the charges. The SEC stated it would use this payment to establish a fund "to provide harmed investors with compensation for losses they sustained in the fraud."[42]

[39] DOJ also filed charges against individuals for various actions.

[40] *U.S. v. BP Exploration & Production, Inc.*, Guilty Plea Agreement, U.S. District Court for the Eastern District of Louisiana, approved January 29, 2013, http://www.justice.gov/iso/opa/resources/433201211151436139900 27.pdf.

[41] For more information on this distribution, see CRS Report R43380, *Gulf Coast Restoration: RESTORE Act and Related Efforts*, by Charles V. Stern, Pervaze A. Sheikh, and Jonathan L. Ramseur.

[42] See U.S. Securities and Exchange Commission, "BP to Pay $525 Million Penalty to Settle SEC Charges of Securities Fraud During Deepwater Horizon Oil Spill," press release, November 15, 2012, http://www.sec.gov/news/press/2012/2012-231.htm.

EPA's Suspension of BP

On November 28, 2012, EPA announced suspension of BP Exploration and Production, Inc. (and a number of affiliated companies) from certain future government contracting activities, including government procurement contracts.[43] As grounds for this suspension, EPA cited BP's lack of business integrity, particularly information that reportedly came to light during settlement discussions with DOJ (discussed above).[44]

EPA's action raised questions concerning BP's ability to participate in offshore lease sales for oil and gas production. BP did not participate in a November 28, 2012, lease sale administered by DOI, leaving many to question whether EPA's action barred BP from bidding or whether BP decided to sit it out.

On March 13, 2014, EPA reached a conditional agreement with BP to lift the suspension and debarment.[45]

Transocean Civil and Criminal Settlement

On January 3, 2013, DOJ announced civil and criminal penalty settlements with Transocean, the company that owned and operated the *Deepwater Horizon* drilling rig. The U.S. District Court in the Eastern District of Louisiana approved the settlements on separate occasions in February 2013.

In the civil settlement, Transocean agreed to pay $1 billion, of which 80% ($800 million) will go into the newly created Gulf Coast Restoration Trust Fund (pursuant to the RESTORE Act in P.L. 112-141). The remaining 20% goes into the Oil Spill Liability Trust Fund.[46]

In the Transocean guilty plea agreement for criminal charges, Transocean agreed to pay $400 million.[47] The amount is to be distributed as follows:

- $150 million to the NFWF;
- $150 million to the National Academy of Sciences for oil spill prevention and response research; and
- $100 million to the Oil Spill Liability Trust Fund.[48]

MOEX Civil Settlement

On February 17, 2012, DOJ and MOEX Offshore 2007 LLC agreed to a $70 million civil penalty settlement, with an additional $20 million in supplemental environmental projects. The U.S. District Court in the Eastern District of Louisiana approved the settlement on June 8, 2012. At the time of the 2010 oil spill, MOEX owned approximately 10% of the lease for the *Macondo* well.

[43] For more information on this issue, see CRS Report RL34753, *Debarment and Suspension of Government Contractors: Legal Overview*, by Kate M. Manuel.

[44] The full announcement of this suspension can be found at http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/2aaf1c1dc80c969885257abf006dafb0!opendocument.

[45] See EPA, "BP Temporarily Suspended from New Contracts with the Federal Government," press release, November 28, 2012, http://www2.epa.gov/home/march-13-2014-administrative-agreement-lifting-suspension-and-debarment-bp-federal-government.

[46] The civil settlement consent decree is available at http://www.justice.gov/iso/opa/resources/915201313122945254063.pdf.

[47] The guilty plea agreement is available at http://www.justice.gov/opa/documents/transocean-plea-agreement.pdf.

[48] Although the agreement does not explicitly state this allocation, penalties paid pursuant to Clean Water Act Section 309 (33 U.S.C. §1319) would go to the fund (26 U.S.C. §9509(b)(8)).

Of the penalty amount, $45 million goes to the Oil Spill Liability Trust Fund, and $25 million is to be distributed in various amounts among the five Gulf states.[49]

DOI Safety Reforms and Regulatory Developments

The 2010 *Deepwater Horizon* oil spill generated considerable interest in offshore drilling safety and related issues. Agencies within DOI have the lead regulatory authority for offshore oil and gas development activities, including operational safety and environmental considerations.[50] This section highlights DOI regulatory developments and other activities that have addressed some of the safety concerns and other issues raised during and after the 2010 oil spill.

DOI Structural Changes

Prior to the oil spill, DOI and congressional investigations had identified a number of management shortcomings, ethical lapses among personnel, and conflicts of interest in the former Minerals Management Service (MMS). Specific concerns involving agency reorganization and regulatory policies toward safety reforms had been raised in oversight hearings and in reports, including reports by the DOI inspector general.[51]

On May 19, 2010, Secretary of the Interior Ken Salazar replaced the MMS with the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). On October 1, 2011, DOI divided BOEMRE into three separate entities: the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue.

DOI Regulatory Developments

DOI agencies have issued several regulatory and policy changes related to offshore activities. In addition to rulemaking activity, DOI agencies issued several notices to lessees (NTLs) to address related issues through policy guidance.[52] In general, these efforts are intended to reduce accidents, injuries, and spills during offshore drilling activities. However, some have argued that more changes are needed.[53]

The following is a timeline of relevant regulatory actions:

- October 14, 2010: interim final rule[54] implementing certain safety measures that were identified in a June 2010 report from the Secretary of the Interior.[55]

[49] For further information, see EPA's website, which includes the consent decree, at http://www.epa.gov/enforcement/air/cases/moex.html.

[50] For more details see CRS Report RL33404, *Offshore Oil and Gas Development: Legal Framework*, by Adam Vann.

[51] See, for example, DOI, Office of Inspector General, *Evaluation Report: Minerals Management Service Royalty-In-Kind Oil Sales Process*, 2008; DOI, Office of Inspector General, *Investigative Report: Island Operating Company et al*, 2010; DOI, Office of Inspector General, *Investigative Report: MMS Oil Marketing Group—Lakewood*, 2008.

[52] The NTLs are available at http://www.bsee.gov/About-BSEE/BSEE-History/Reforms/Reforms/.

[53] See, for example, Elizabeth Birnbaum and Jacqualine Savitz, "The Deepwater Horizon Threat," *New York Times*, April 16, 2014.

[54] 75 *Federal Register* 63345 (October 14, 2010).

[55] On June 8, 2010, BOEMRE issued an NTL addressing those recommendations identified in the safety measures report as warranting immediate implementation (NTL No. 2010–N05—Increased Safety Measures for Energy Development on the OCS).

- October 15, 2010: final rule requiring operators on the outer continental shelf (OCS) to implement a Safety and Environmental Management Systems (SEMS) program.[56]
- August 22, 2012: final rule amending and clarifying several safety provisions in the October 14, 2010, interim final rule.[57]
- April 5, 2013: final rule adding new requirements to the existing SEMS regulations.[58]
- December 12, 2014: final rule increasing the Oil Pollution Act liability limit[59] for damages applicable to offshore facilities from $75 million to approximately $134 million.[60]
- February 24, 2015: proposed rule that would revise existing regulations for exploratory drilling and associated activities on the OCS in the Arctic region.[61]
- April 13, 2015: proposed rule that would alter the requirements for blowout preventers and specific drilling practices/procedures.[62]

EPA Dispersant Regulations

EPA issued a proposed rule on January 22, 2015,[63] that would amend the existing dispersant regulations (40 CFR Part 300, Subpart J). Dispersants are chemical agents that enhance the breakup of oil into small oil droplets that mix with the water column. Dispersants received considerable attention during the *Deepwater Horizon* oil spill response. During the 2010 oil spill, responders used, in aggregate, 1.8 million gallons of dispersants on both the surface water and (for the first time) at the site of the uncontrolled well approximately 5,000 feet below the surface. While dispersants have proven effective in breaking up the oil on the surface, stakeholders raised questions about the fate of the dispersed oil and the chemical dispersants and their short- and long-term environmental impacts.

CWA Section 311(d) requires EPA, in cooperation with the states, to prepare a schedule of dispersants, other chemicals, and other spill-mitigating devices and substances. This product schedule includes dispersants and other chemical or bioremediation products that may be authorized for use on oil discharges in accordance with the procedures set forth in the National Contingency Plan (NCP).

EPA may add products to the NCP product schedule after companies submit specific data to the agency. Data requirements include results from effectiveness and toxicity testing. Although EPA reserves the right to verify testing data (and to require additional information), the regulations do not establish a toxicity threshold for placement on the schedule.

[56] This rule (75 *Federal Register* 63609) was first considered in an advanced notice of proposed rulemaking in 2006.

[57] 77 *Federal Register* 50856 (August 22, 2012).

[58] 78 *Federal Register* 20423 (April 5, 2013).

[59] 33 U.S.C. §2704(a)(3). The liability limit for offshore facilities applies only to natural resource damages and eligible economic damages. The liability for response costs (i.e., cleanup costs) is unlimited.

[60] 79 *Federal Register* 73832 (December 12, 2014).

[61] 80 *Federal Register* 9916 (February 24, 2015).

[62] As of the date of this report, the rule has not been published in the *Federal Register*. On April 13, 2015, BSEE provided a copy of the rule on its website at http://www.bsee.gov/BSEE-Newsroom/BSEE-News-Briefs/2015/BSEE-Releases-Proposed-Well-Control-Regulations-to-Ensure-Safe-and-Responsible-Offshore-Oil-and-Gas-Development/.

[63] 80 *Federal Register* 3380 (January 22, 2015).

EPA's January 2015 proposed rule would, among other provisions:

- revise and expand the testing requirements that must be performed to determine eligibility for EPA's product schedule;
- establish minimum criteria for toxicity and revise the minimum criteria for efficacy for a dispersant to be listed on the product schedule;
- amend and clarify the process for pre-authorization of dispersant use; and
- require monitoring of various environmental parameters when dispersants are used in specific situations (e.g., subsurface application or extended surface application).

Congressional Activity

This section provides information about oil spill-related legislative activity from the 111th Congress to the 114th Congress. Interest and activity in oil spill matters was substantial during and soon after the 2010 oil spill response (111th Congress). As time progressed, oil-spill-related legislative activity decreased and, in general, addressed topics not directly related to the *Deepwater Horizon* incident.

Activity in the 111th Congress[64]

During the immediate aftermath of the oil spill, Senate and House committees in the 111th Congress held more than 60 hearings on a variety of oil-spill-related issues.[65] Members introduced more than 150 legislative proposals related to oil spill matters. The 111th Congress enacted three of these proposals into law (P.L. 111-191, P.L. 111-212, and P.L. 111-281). Provisions in the first two laws generally concerned short-term matters that will not have a lasting impact on oil spill governance. However, H.R. 3619, the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, which the President signed October 15, 2010 (P.L. 111-281), included more substantial changes.

In addition to the enacted legislation, the House in the 111th Congress passed several bills, including H.R. 3534 (the Consolidated Land, Energy, and Aquatic Resources Act, or CLEAR Act), that included multiple oil spill provisions. The Senate had comparable bills on its legislative calendar under General Orders but did not vote on their passage.

Activity in the 112th Congress[66]

Although interest arguably diminished in the 112th Congress (relative to interest in the 111th Congress—see below), some Members continued to express concerns regarding various oil-spill-related policy matters. Members proposed over 50 bills that contained oil-spill-related provisions.

[64] For further details see, CRS Report R41453, *Oil Spill Legislation in the 111th Congress*, by Jonathan L. Ramseur (archived).

[65] In some cases, investigatory reports followed. For example, see reports by the House Committee on Energy and Commerce Oversight and Investigations Subcommittee and Energy and the Environment Subcommittee at http://democrats.energycommerce.house.gov/ and the House Committee on Natural Resources at http://naturalresources.house.gov/calendar/archives/list.aspx?EventTypeID=158:165.

[66] For more details, see CRS Report R41684, *Enacted and Proposed Oil Spill Legislation in the 112th Congress*, by Jonathan L. Ramseur.

The 112th Congress enacted two statutes that contain oil-spill-related provisions. The RESTORE Act, enacted on July 6, 2012, is discussed above. On January 3, 2012, the President signed P.L. 112-90 (the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011), which

- increases civil penalties for violating safety requirements and requires automatic and remote-controlled shutoff valves on newly constructed transmission pipelines;
- directs the Department of Transportation to analyze leak detection systems and, after a review by Congress, issue requirements based on this analysis; and
- requires the Pipeline and Hazardous Materials Safety Administration to review whether current regulations are sufficient to regulate pipelines transmitting "diluted bitumen" and analyze whether such oil presents an increased risk of release.

On December 23, 2011, the 112th Congress enacted one bill with provisions that affect OCS development: P.L. 112-74 (Consolidated Appropriations Act, 2012). Among other provisions, this act transferred air emission regulatory authority in the OCS off Alaska's north coast from EPA to DOI. Some stakeholders would contend that DOI's program has less stringent requirements than EPA's program.[67]

In addition, the House passed several bills that intended to encourage oil and gas development on the OCS: H.R. 1230, H.R. 1229, H.R. 1231, and H.R. 2021. The Senate did not report analogous legislation.

Activity in the 113th Congress

Compared to prior Congresses, oil-spill-related legislation received less attention in the 113th Congress. Members proposed approximately 20 bills that include oil-spill-related provisions. The 113th Congress enacted one bill that, among other provisions, encourages the development of agreements among Arctic nations to coordinate oil spill prevention and response capabilities: P.L. 113-281 (Howard Coble Coast Guard and Maritime Transportation Act of 2014). In addition, the House passed two bills with oil-spill-related provisions. On June 28, 2013, the House passed the Offshore Energy and Jobs Act (H.R. 2231), which would accelerate domestic oil and gas production by providing for, among other statutory changes, a reorganization of the current DOI subdivisions responsible for domestic oil and gas operations. On September 18, 2014, the House passed the American Energy Solutions for Lower Costs and More American Jobs Act (H.R. 2), which, among other provisions, would require the Keystone pipeline owner/operator to provide the oil spill response plan to the governors of each state in which the pipeline operates.

Activity in the 114th Congress

As of the date of this report, Members in the 114th Congress have introduced one bill that contains oil-spill-related provisions.

Investigations and Reports

Several investigations and commissions—both federal and private—were initiated to examine issues surrounding the *Deepwater Horizon* incident. The following includes a list of the more

[67] For more information, see CRS Report R42123, *Controlling Air Emissions from Outer Continental Shelf Sources: A Comparison of Two Programs—EPA and DOI*, by Jonathan L. Ramseur.

prominent studies, investigations, and inquiries that have been completed or are underway (listed in order of report publication date):

- Thad Allen, *National Incident Commander's Report: MC252 Deepwater Horizon*, October 2010.[68]
- U.S. Coast Guard, *BP Deepwater Horizon Oil Spill: Incident Specific Preparedness Review*, January 2011.[69]
- National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deep Water: The Gulf Disaster and the Future of Offshore Drilling*, report to the President, January, 2011.[70]
- Joint Investigation of Bureau of Ocean Energy Management, Regulation, and Enforcement and U.S. Coast Guard.
  - Volume I: U.S. Coast Guard, *Report of Investigation into the Circumstances Surrounding the Explosion, Fire, Sinking and Loss of Eleven Crew Members Aboard the Mobile Offshore Drilling Unit Deepwater Horizon*, April 2011.[71]
  - Volume II: Bureau of Ocean Energy Management, Regulation, and Enforcement, *Report Regarding the Causes of the April 20, 2010 Macondo Well Blowout*, September 2011.[72]
- U.S. Coast Guard, *On Scene Coordinator Report: Deepwater Horizon Oil Spill*, September 2011.[73]
- National Academy of Engineering and National Research Council, *Macondo Well—Deepwater Horizon Blowout: Lessons for Improving Offshore Drilling Safety*, December 2011.[74]
- Government Accountability Office, *Interior Has Strengthened Its Oversight of Subsea Well Containment, but Should Improve Its Documentation*, February 2012.[75]
- Oil Spill Commission Action, *Assessing Progress: Implementing the Recommendations of the National Oil Spill Commission*, April 2012.[76]
- Gulf Coast Ecosystem Restoration Council, *The Path Forward to Restoring the Gulf Coast: A Proposed Comprehensive Plan*, January 2013.[77]
- U.S. Chemical Safety and Hazard Investigation Board, *Investigation Report: Explosion and Fire at the Macondo Well*, two volumes, June 2014.[78]

[68] See http://www.nrt.org.

[69] See http://www.uscg.mil/foia/docs/DWH/BPDWH.pdf.

[70] See http://www.oilspillcommission.gov/.

[71] For cover letter, see http://www.boemre.gov/pdfs/maps/JointMemo092011.pdf. Volume I available at https://homeport.uscg.mil.

[72] See http://www.boemre.gov/pdfs/maps/DWHFINAL.pdf.

[73] See https://homeport.uscg.mil.

[74] See http://www.nae.edu/default.aspx?id=19649.

[75] GAO-11-394T, February 2012. See http://www.gao.gov/products/GAO-12-244.

[76] See http://oscaction.org.

[77] See http://www.restorethegulf.gov/release/2013/01/29/path-forward-restoring-gulf-coast.

[78] See http://www.csb.gov/macondo-blowout-and-explosion/.

Selected CRS Reports for Further Reading

Legislation

CRS Report R41684, *Enacted and Proposed Oil Spill Legislation in the 112th Congress*, by Jonathan L. Ramseur.

CRS Report R41453, *Oil Spill Legislation in the 111th Congress*, by Jonathan L. Ramseur.

2010 Deepwater Horizon Oil Spill

CRS Report R43380, *Gulf Coast Restoration: RESTORE Act and Related Efforts*, by Charles V. Stern, Pervaze A. Sheikh, and Jonathan L. Ramseur.

CRS Report R41679, *Liability and Compensation Issues Raised by the 2010 Gulf Oil Spill*, by Jonathan L. Ramseur.

CRS Report R41531, *Deepwater Horizon Oil Spill: The Fate of the Oil*, by Jonathan L. Ramseur.

CRS Report R41972, *The 2010 Deepwater Horizon Oil Spill: Natural Resource Damage Assessment Under the Oil Pollution Act*, by Adam Vann and Robert Meltz.

CRS Report R41234, *Potential Stafford Act Declarations for the Gulf Coast Oil Spill: Issues for Congress*, by Francis X. McCarthy.

Background

CRS Report RL33705, *Oil Spills in U.S. Coastal Waters: Background and Governance*, by Jonathan L. Ramseur.

CRS Report R43251, *Oil and Chemical Spills: Federal Emergency Response Framework*, by David M. Bearden and Jonathan L. Ramseur.

CRS Report R41266, *Oil Pollution Act of 1990 (OPA): Liability of Responsible Parties*, by Robert Meltz.

CRS Report RL34209, *Commercial Fishery Disaster Assistance*, by Harold F. Upton.

CRS Report RL33404, *Offshore Oil and Gas Development: Legal Framework*, by Adam Vann.

CRS Report RS22022, *Disaster Unemployment Assistance (DUA)*, by Julie M. Whittaker.

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